

Administrative Office of the U.S. Courts; for the Postal Service, the Postmaster General; and for any other independent establishment that is an entity of the Federal Government, the head of the establishment. For purposes of this subpart, *agency head* is also deemed to include the designated representative of the head of an executive department as defined in 5 U.S.C. § 101, except that, for provisions dealing with law enforcement officers and firefighters, the designated representative must be a department headquarters-level official who reports directly to the executive department head, or to the deputy department head, and who is the sole such representative for the entire department.

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7. In section 842.805 paragraph (d) is revised to read as follows:

§ 842.805 Withholding and contributions.

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(d) Upon proper application from an employee, former employee or eligible survivor of a former employee, an employing agency or former employing agency will pay a refund or erroneous additional withholdings for service that is found not to have been covered service. If an individual has paid to OPM a deposit or redeposit, including the additional amount required for covered service, and the deposit is later determined to be erroneous because the service was not covered service, OPM will pay the refund, upon proper application, to the individual, without interest.

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[FR Doc. 95-994 Filed 1-13-95; 8:45 am]

BILLING CODE 6325-01-M

FEDERAL RESERVE SYSTEM

12 CFR Part 261a

[Docket No. R-0826]

Rules Regarding Access to Personal Information Under the Privacy Act

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: As part of its regulatory review and improvement process, the Board of Governors of the Federal Reserve System (Board) has revised and updated its Rules Regarding Access to Personal Information Under the Privacy Act (Access Rules).

EFFECTIVE DATE: February 16, 1995.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boutilier, Senior Counsel

(202/452-2418), Legal Division, Board of Governors of the Federal Reserve System, Washington, DC 20551. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION: The Board's Access Rules implement the Privacy Act of 1974 (5 U.S.C. 552a). This revision of the Board's Access Rules is a part of the Board's ongoing program to review and update its existing regulations. There have been no substantive changes to the Privacy Act recently, accordingly, there is no need for substantive changes to the Board's Access Rules. The most significant change made to the Board's Access Rules is the establishment of special procedures for requesting access or amendment to records maintained by the Board's Office of the Inspector General, which was established in 1989.

Most other changes are procedural or administrative in nature. The revised regulation clarifies that the Secretary of the Board is the official custodian of records with the delegated authority to respond to requests for access or amendment, except for requests for records maintained by the Office of the Inspector General. The duplication fees to be charged for documents produced in response to a request for access under the Privacy Act are the same as those charged for documents produced in response to a request under the Freedom of Information Act (FOIA), because requests under the Privacy Act are likely to be processed also under FOIA. (No fees for search or review are established, because such fees are not authorized under the Privacy Act.)

The Board has changed the special procedures for release of medical records to clarify that release of medical records through a licensed physician does not permit the licensed physician to withhold the medical records from the requester. Rather, the licensed physician is expected to provide access to the medical records while explaining sensitive or complex information contained in the medical records.

Finally, the revised Access Rules specifically list the Board's systems of records that are exempt from certain provisions of the Privacy Act to the extent they contain either law enforcement information or reference information provided in confidence.

The revised Access Rules were published for public comment on February 7, 1994 (59 FR 5548). The Board received only three comments on the proposed Rules—two favorable comments (one from a commercial bank

and one from a Federal Reserve Bank), and one unfavorable comment from a trade association. The unfavorable comment did not object to the proposed Rules, but objected to an existing system of records, the Chain Banking Reference System. (The notice for this system of records was published on November 9, 1988, 53 FR 45392.) The commenter expressed concern that confidential information in the Chain Banking Reference System could be released to the public. This apprehension is misplaced, because information contained in this system of records is information that is contained elsewhere in Board records, and it is no more likely to be released from the system of records than it is from other Board records. In fact, it is less likely to be released from the system of records, because, in general, the Board is prohibited from releasing such Privacy Act information except with the consent of the individual concerned.

One change has been made to the revised Access Rules since they were published for comment. The published Access Rules contained a delegation to the Secretary of authority to approve any new system of records or amend any existing system of records. Upon further consideration, the Board has changed this delegation to authorize the Secretary to approve or amend only non-exempt systems of records. An exempt system of records is one which is exempt from certain provisions of the Privacy Act, such as disclosure to the individual identified in the records. Any exempt system of records must be listed in the Board's Access Rules. Accordingly, adoption of a new system of records would require amendment of the Board's Access Rules to add it to the list, and this can not be done by the Secretary. Changes to an existing exempt system of records may also require changes to the Board's Rules. Accordingly, the Board has decided to delegate to the Secretary authority to approve or amend only non-exempt systems of records.

As required by Regulatory Flexibility Act (5 U.S.C. 604(a)), a "succinct statement of the need for, and objectives of the rule" is found elsewhere in this preamble. The provisions in this rule shall be applicable to all persons submitting requests for access to information under the Privacy Act of 1974 (5 U.S.C. 552a). An exemption for small entities is not appropriate because the Privacy Act protects the privacy of individuals from unauthorized access by any entity. This rule will not have any significant impact on small entities.

List of Subjects in 12 CFR Part 261a

Federal Reserve System, Privacy.

For the reasons set forth in the preamble, 12 CFR part 261a is revised to read as follows:

PART 261a—RULES REGARDING ACCESS TO PERSONAL INFORMATION UNDER THE PRIVACY ACT OF 1974

Subpart A—General Provisions

Sec.

- 261a.1 Authority, purpose and scope.
- 261a.2 Definitions.
- 261a.3 Custodian of records; delegations of authority.
- 261a.4 Fees.

Subpart B—Procedures for Requests by Individual to Whom Record Pertains

Sec.

- 261a.5 Request for access to record.
- 261a.6 Board procedures for responding to request for access.
- 261a.7 Special procedures for medical records.
- 261a.8 Request for amendment to record.
- 261a.9 Agency review of request for amendment of record.
- 261a.10 Appeal of adverse determination of request for access or amendment.

Subpart C—Disclosure to Person Other than Individual to Whom Record Pertains

Sec.

- 261a.11 Restrictions on disclosure.
- 261a.12 Exceptions.

Subpart D—Exempt Records

Sec.

- 261a.13 Exemptions.

Authority: 5 U.S.C. 552a.

Subpart A—General Provisions**§ 261a.1 Authority, purpose and scope.**

(a) *Authority.* This part is issued by the Board of Governors of the Federal Reserve System (the Board) pursuant to the Privacy Act of 1974 (5 U.S.C. 552a).

(b) *Purpose.* The purpose of this part is to implement the provisions of the Privacy Act of 1974 (5 U.S.C. 552a) with regard to the maintenance, protection, disclosure, and amendment of records contained within systems of records maintained by the Board.

(c) *Scope.* This part covers requests for access to, or amendment of, records concerning individuals that are contained in systems of records maintained by the Board.

§ 261a.2 Definitions.

For the purposes of this part, the following definitions apply:

(a) *Business day* means any day except Saturday, Sunday or a legal Federal holiday.

(b) *Designated system of records* means a system of records maintained

by the Board that has been listed in the **Federal Register** pursuant to the requirements of 5 U.S.C. 552a(e).

(c) *Guardian* means the parent of a minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction.

(d) *Individual* means a natural person who is either a citizen of the United States or an alien lawfully admitted for permanent residence.

(e) *Maintain* includes maintain, collect, use, disseminate, or control.

(f) *Record* means any item, collection, or grouping of information about an individual maintained by the Board that contains the individual's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint, voice print, or photograph.

(g) *Routine use* means, with respect to disclosure of a record, the use of such record for a purpose that is compatible with the purpose for which it was collected or created.

(h) *System of records* means a group of any records under the control of the Board from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

§ 261a.3 Custodian of records; delegations of authority.

(a) *Custodian of records.* The Secretary of the Board is the official custodian of all records of the Board in the possession or control of the Board.

(b) *Delegated authority of Secretary.* With regard to this regulation, the Secretary of the Board is delegated the authority to:

(1) Respond to requests for access or amendment to records contained in a system of records, except for such requests regarding systems of records maintained by the Board's Office of the Inspector General (OIG);

(2) Approve the publication of new systems of records and amend existing systems of records, except systems of records exempted pursuant to §§ 261a.13(b), (c) and (d);

(3) File the biennial reports required by the Privacy Act.

(c) *Delegated authority of designee.* Any action or determination required or permitted by this part to be done by the Secretary of the Board may be done by an Associate Secretary or other responsible employee of the Board who has been duly designated for this purpose by the Secretary.

(d) *Delegated authority of Inspector General.* With regard to systems of

records maintained by the OIG, the Inspector General is delegated the authority to respond to requests for access or amendment.

§ 261a.4 Fees.

(a) *Copies of records.* Copies of records requested pursuant to § 261a.5 of this part shall be provided at the same cost charged for duplication of records and/or production of computer output under the Board's Rules Regarding Availability of Information, § 261.10 of this part.

(b) *No fee.* Documents may be furnished without charge where total charges are less than \$5.

(c) *Waiver of fees.* In connection with any request by an employee, former employee, or applicant for employment, for records for use in prosecuting a grievance or complaint of discrimination against the Board, fees shall be waived where the total charges (including charges for information provided under the Freedom of Information Act) are \$50 or less; but the Secretary may waive fees in excess of that amount.

Subpart B—Procedures for Requests by Individual to Whom Record Pertains**§ 261a.5 Request for access to record.**

(a) *Procedures for making request.* (1) Any individual (or guardian of an individual) other than a current Board employee desiring to learn of the existence of, or to gain access to, his or her record in a designated system of records shall submit a request in writing to the Secretary of the Board, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue NW., Washington, DC 20551.

(2) A request by a current Board employee for that employee's own personnel records may be made in person during regular business hours at the Division of Human Resources, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue NW., Washington, DC 20551.

(3) A request by a current Board employee for information other than personnel information may be made in person during regular business hours at the Freedom of Information Office, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue NW., Washington, DC 20551.

(4) Requests for information contained in a system of records maintained by the Board's OIG shall be submitted in writing to the Inspector General, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue NW., Washington, DC 20551.

(b) *Contents of request.* A request made pursuant to paragraph (a) of this section shall include the following:

- (1) A statement that it is made pursuant to the Privacy Act of 1974;
- (2) The name of the system of records expected to contain the record requested or a concise description of such system of records.

(3) Necessary information to verify the identity of the requester pursuant to paragraph (c) of this section; and

(4) Any other information that may assist in the rapid identification of the record for which access is being requested (e.g., maiden name, dates of employment, etc.).

(c) *Verification of identity.* The Board shall require proof of identity from a requester and reserves the right to determine the adequacy of such proof. In general, the following shall be considered adequate proof of identity:

- (1) For a current Board employee, his or her Board identification card; or
- (2) For an individual other than a current Board employee, either:

- (i) Two forms of identification, one of which has a picture of the individual requesting access; or
- (ii) A notarized statement attesting to the identity of the requester.

(d) *Verification of identity not required.* No verification of identity shall be required of individuals seeking access to records that are otherwise available to any person under 5 U.S.C. 552, Freedom of Information Act.

(e) *Request for accounting of previous disclosures.* An individual making a request pursuant to paragraph (a) of this section may also include a request for an accounting (pursuant to 5 U.S.C. 552a(c)) of previous disclosures of records pertaining to such individual in a designated system of records.

§ 261a.6 Board procedures for responding to request for access.

(a) *Compliance with Freedom of Information Act.* Every request made pursuant to § 261a.5 of this part shall also be handled by the Board as a request for information pursuant to the Freedom of Information Act (5 U.S.C. 552), except that the time limits set forth in paragraph (b) of this section and the fees specified in § 261a.4 of this part shall apply to such requests.

(b) *Time limits.* Every request made pursuant to § 261a.5 of this part shall be acknowledged or, where practicable, substantially responded to within 10 business days from receipt of the request.

(c) *Disclosure.* (1) Information to be disclosed pursuant to this part and the Privacy Act, except for information maintained by the Board's OIG, shall be

made available for inspection and copying during regular business hours at the Board's Freedom of Information Office.

(2) Information to be disclosed that is maintained by the Board's OIG shall be made available for inspection and copying at the OIG.

(3) When the requested record cannot reasonably be put into a form for individual inspection (e.g., computer tapes), or when the requester asks that the information be forwarded, copies of such information shall be mailed to the requester.

(4) Access to or copies of requested information shall be promptly provided after the acknowledgement as provided in paragraph (b) of this section, unless good cause for delay is communicated to the requester.

(d) *Other authorized presence.* The requester of information may be accompanied in the inspection of that information by a person of the requester's own choosing upon the requester's submission of a written and signed statement authorizing the presence of such person.

(e) *Denial of request.* A denial of a request made pursuant to § 261a.5 of this part shall include a statement of the reason(s) for denial and the procedures for appealing the denial.

§ 261a.7 Special procedures for medical records.

Medical or psychological records requested pursuant to § 261a.5 of this part shall be disclosed directly to the requester unless such disclosure could, in the judgment of the Privacy Officer, in consultation with the Board's physician, have an adverse effect upon the requester. Upon such determination, the information shall be transmitted to a licensed physician named by the requester, who will disclose those records to the requester in a manner the physician deems appropriate.

§ 261a.8 Request for amendment of record.

(a) *Procedures for making request.* (1) An individual desiring to amend a record in a designated system of records that pertains to him or her shall submit a request in writing to the Secretary of the Board (or to the Inspector General for records in a system of records maintained by the OIG) in an envelope clearly marked "Privacy Act Amendment Request."

(2) Each request for amendment of a record shall:

- (i) Identify the system of records containing the record for which amendment is requested;
- (ii) Specify the portion of that record requested to be amended; and

(iii) Describe the nature of and reasons for each requested amendment.

(3) Each request for amendment of a record shall be subject to verification of identity under the procedures set forth in § 261a.5(c) of this part, unless such verification has already been made in a related request for access or amendment.

(b) *Burden of proof.* The request for amendment of a record shall set forth the reasons the individual believes the record is not accurate, relevant, timely, or complete. The burden of proof for demonstrating the appropriateness of the requested amendment rests with the requester, and the requester shall provide relevant and convincing evidence in support of the request.

§ 261a.9 Board review of request for amendment of record.

(a) *Time limits.* The Board shall acknowledge a request for amendment of a record within 10 business days of receipt of the request. Such acknowledgement may request additional information necessary for a determination on the request for amendment. To the extent possible, a determination upon a request to amend a record shall be made within 10 business days after receipt of the request.

(b) *Contents of response to request for amendment.* The response to a request for amendment shall include the following:

- (1) The decision to grant or deny, in whole or in part, the request for amendment; and
- (2) If the request is denied:
 - (i) The reasons for denial of any portion of the request for amendment;
 - (ii) The requester's right to appeal any denial; and
 - (iii) The procedures for appealing the denial to the appropriate official.

§ 261a.10 Appeal of adverse determination of request for access or amendment.

(a) *Appeal.* A requester may appeal a denial of a request made pursuant to § 261a.5 or § 261a.8 of this part to the Board, or any official designated by the chairman of the Board, within 10 business days of issuance of notification of denial. The appeal shall:

- (1) Be made in writing to the Secretary of the Board, with the words "PRIVACY ACT APPEAL" written prominently on the first page;
- (2) Specify the previous background of the request; and
- (3) Provide reasons why the initial denial is believed to be in error.

(b) *Determination.* The Board or an official designated by the Chairman of the Board shall make a determination

with respect to such appeal not later than 30 business days from its receipt, unless the time is extended for good cause shown.

(1) If the Board or designated official grants an appeal regarding a request for amendment, the Board shall take the necessary steps to amend the record, and, when appropriate and possible, notify prior recipients of the record of the Board's action.

(2) If the Board or designated official denies an appeal, the Board shall inform the requester of such determination, give a statement of the reasons therefor, and inform the requester of the right of judicial review of the determination.

(c) *Statement of disagreement.* (1) Upon receipt of a denial of an appeal regarding a request for amendment, the requester may file a concise statement of disagreement with the denial. Such statement shall be maintained with the record the requester sought to amend, and any disclosure of the record shall include a copy of the statement of disagreement.

(2) When practicable and appropriate, the Board shall provide a copy of the statement of disagreement to any person or other agency to whom the record was previously disclosed.

Subpart C—Disclosure to Person Other Than Individual to Whom Record Pertains

§ 261a.11 Restrictions on disclosure.

No record contained in a designated system of records shall be disclosed to any person or agency without the prior written consent of the individual to whom the record pertains unless the disclosure is authorized by § 261a.12 of this part.

§ 261a.12 Exceptions.

The restrictions on disclosure in § 261a.11 of this part do not apply to any disclosure:

(a) To those officers and employees of the Board who have a need for the record in the performance of their duties;

(b) That is required under the Freedom of Information Act (5 U.S.C. 552);

(c) For a routine use listed with respect to a designated system of records;

(d) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13 of the United States Code;

(e) To a recipient who has provided the Board with advance adequate written assurance that the record will be used solely as a statistical research or

reporting record, and the record is to be transferred in a form that is not individually identifiable;

(f) To the National Archives of the United States as a record that has sufficient historical or other value to warrant its continued preservation by the United States government, or for evaluation by the administrator of General Services or his designee to determine whether the record has such value;

(g) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the Board specifying the particular portion desired and the law enforcement activity for which the record is sought;

(h) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(i) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(j) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(k) Pursuant to the order of a court of competent jurisdiction; or

(l) To a consumer reporting agency in accordance with 31 U.S.C. 3711(f).

Subpart D—Exempt Records

§ 261a.13 Exemptions.

(a) *Information compiled for civil action.* Nothing in this regulation shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

(b) *Law enforcement information.* Pursuant to section (k)(2) of the Privacy Act of 1974 (5 U.S.C. 552a(k)(2)), the Board has deemed it necessary to exempt certain designated systems of records maintained by the Board from the requirements of the Privacy Act concerning access to accountings of disclosures and to records, maintenance of only relevant and necessary information in files, and certain publication provisions, respectively, 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f), and §§ 261a.5, 261a.7 and 261a.8 of this part. Accordingly, the following designated systems of records

are exempt from these provisions, but only to the extent that they contain investigatory materials compiled for law enforcement purposes:

(1) BGFRS-1 Recruiting and Placement Records.

(2) BGFRS-2 Personnel Background Investigation Reports.

(3) BGFRS-4 General Personnel Records.

(4) BGFRS-5 EEO Discrimination Complaint File.

(5) BGFRS-9 Consultant and Staff Associate File.

(6) BGFRS-16 Regulation G Reports.

(7) BGFRS-18 Consumer Complaint Information System.

(8) BGFRS-21 Supervisory Tracking and Reference System.

(9) BGFRS/OIG-1 OIG Investigatory Records.

(c) *Confidential references.* Pursuant to section (k)(5) of the Privacy Act of 1974 (5 U.S.C. 552a(k)(5)), the Board has deemed it necessary to exempt certain designated systems of records maintained by the Board from the requirements of the Privacy Act concerning access to accountings of disclosures and to records, maintenance of only relevant and necessary information in files, and certain publication provisions, respectively 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f), and §§ 261a.5, 261a.7 and 261a.8 of this part. Accordingly, the following systems of records are exempt from these provisions, but only to the extent that they contain investigatory material compiled to determine an individual's suitability, eligibility, and qualifications for Board employment or access to classified information, and the disclosure of such material would reveal the identity of a source who furnished information to the Board under a promise of confidentiality.

(1) BGFRS-1 Recruiting and Placement Records.

(2) BGFRS-2 Personnel Background Investigation Reports.

(3) BGFRS-4 General Personnel Records.

(4) BGFRS-9 Consultant and Staff Associate File.

(5) BGFRS-10 General File on Board Members.

(6) BGFRS-11 Official General Files.

(7) BGFRS-13 General File of Examiners and Assistant Examiners at Federal Reserve Banks.

(8) BGFRS-14 General File of Federal Reserve Bank and Branch Directors.

(9) BGFRS-15 General Files of Federal Reserve Agents, Alternates and Representatives at Federal Reserve Banks.

(10) BGFRS/OIG-2 OIG Personnel Records.

(d) *Criminal law enforcement information.* Pursuant to 5 U.S.C. 552a(j)(2), the Board has determined that portions of the OIG Investigative Records (BGFRS/OIG-1) shall be exempt from any part of the Privacy Act (5 U.S.C. 552a), except the provisions regarding disclosure, the requirement to keep an accounting, certain publication requirements, certain requirements regarding the proper maintenance of systems of records, and the criminal penalties for violation of the Privacy Act, respectively, 5 U.S.C. 552a (b), (c)(1), and (2), (e)(4) (A) through (F), (e)(6), (e)(7), (e)(9), (e)(10), (e)(11) and (i). This designated system of records is maintained by the OIG, a Board component that performs as its principal function an activity pertaining to the enforcement of criminal laws. The exempt portions of the records consist of:

(1) Information compiled for the purpose of identifying individual criminal offenders and alleged offenders;

(2) Information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or

(3) Reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

By order of the Board of Governors of the Federal Reserve System, January 11, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95-1059 Filed 1-13-95; 8:45 am]

BILLING CODE 6210-01-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 791

[Docket Number R-95-1637; FR-3446-N-02]

RIN 2501-AB62

Allocation of Budget Authority for Housing Assistance; Notice of Extension of Effective Period of Interim Rule

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of extension of effective period of interim rule.

SUMMARY: This notice extends the effective period of HUD's interim rule which added two subcategories of budget authority for uses that the

Secretary determines are incapable of geographic allocation by formula.

EFFECTIVE DATE: This notice, which extends the effective period of the interim rule, is effective on February 1, 1995. The effective period for the interim rule is extended from February 1, 1995 until the final rule is published.

FOR FURTHER INFORMATION CONTACT: For the Public and Indian Housing program, and section 8 voucher, certificate, and moderate rehabilitation programs, William R. Minning, Director, Policy Division, Room 4234, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410-0500, telephone (202) 708-0713. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 708-0850. For other assisted housing programs, Joel Balsham, Program Advisor, Office of the Deputy Assistant Secretary for Multifamily Housing, Room 6124, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410-8000, telephone (202) 708-4135. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 755-4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Background

On August 4, 1993 (58 FR 41426), the Department published an interim rule which added two subcategories of budget assistance to § 791.403 for uses that the Secretary determines are incapable of geographic allocation by formula. The first subcategory added by the interim rule was budget authority as identified in the Operating Plan submitted to the Appropriations Committees.

The "Operating Plan" is presented annually to the Appropriations Committees to reflect changes from the budget originally submitted to the Congress by the Administration. Its history dates back to 1987 when the Conference Report accompanying H.J. Res. 395, "Making Further Continuing Appropriations for the Fiscal Year Ending September 30, 1988," stated that "because of the substantial changes in many accounts from the budget estimates (including a number of general reductions), the conferees direct that [HUD and the Independent Agencies covered in the same appropriation] submit a fiscal year 1988 operating plan by February 1, 1988." H.R. Rep. 100-498 (Dec. 22, 1987), at 837. The statement added that "the conferees expect such operating plans to include recommended changes from the budget estimates except that no reductions may be proposed in

programs, projects, or activities for which funding has been added by the Congress." Ever since that time, the Department has furnished the Committees an Operating Plan annually which identifies changes from published estimates, including reprogramming within amounts set out in the Conference Report table.

The August 1993 interim rule also added a second subcategory of budget authority incapable of geographic allocation by formula consisting of recently enacted legislation which prescribes that a portion of program assistance be set aside or otherwise mandated for other than general use. Recent HUD authorization statutory amendments contain provisions which have the effect of specifically targeting appropriated funds. For example, section 101(b) of the Housing and Community Development Act of 1992, Pub.L. 102-550 (Oct. 28, 1992), amended the United States Housing Act of 1937 to require funding of \$20 million in both FY 1993 and FY 1994 for section 8 15 year contracts for project-based assistance to be used for a multicultural tenant empowerment and homeownership project located in the District of Columbia. This assistance obviously is incapable of geographic allocation by formula because it is expressly authorized for one city only.

In the first year following enactment of set-asides like the one described immediately above, the Operating Plan could be expected to address these newly established purposes. In subsequent years, however, they would have been incorporated in the Department's budget. For that reason, the interim rule also added to § 791.403(b)(ii) the subcategory of assistance included in an authorization statute, such as set-asides, where the Secretary determines that such assistance is incapable of geographic allocation by formula.

The interim rule published in August 1993 expires on February 1, 1995 if there are no set asides in the operating plan submitted to Congress in January 1995. The rule finalizing the August 1993 interim rule is in its last stages of review. However, in order to prevent a period during which the Department cannot meet Congressional intent in allocating budget authority, HUD is extending the effective period of the interim rule until the final rule is published.

II. Other Matters

A. Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on